

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION IV

CA 06-924

MARCH 14, 2007

TRIENCE M. JACOBS

APPELLANT

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION
[NO. F407751]

V.

SOUTH ARKANSAS DEVELOPMENT
CENTER and COMMERCE &
INDUSTRY INSURANCE CO.
APPELLEES

REVERSED AND REMANDED ON
DIRECT APPEAL; AFFIRMED ON
CROSS-APPEAL

This is an appeal from the Workers' Compensation Commission. Appellant Trience Jacobs appeals the denial of benefits regarding a back injury she claimed was suffered along with an admittedly compensable knee injury she sustained in a slip-and-fall at work on June 28, 2004. Her employer, appellee South Arkansas Development Center, cross-appeals the award of additional medical benefits and additional temporary total disability (TTD) benefits for the knee injury. We reverse and remand on direct appeal, and we affirm on cross-appeal.

Jacobs worked for appellee South Arkansas Development Center, providing supervisory services for disabled children. She primarily rode the van that picked up the children, ensured that they were secure in their seats and that they behaved en route, and

escorted the children to and from their class rooms. On the morning of June 28, 2004, Jacobs fell on a slippery concrete floor at the Center, striking her left knee. She was sent to the company doctor, who ordered x-rays, which revealed mild to moderate arthritis. The doctor noted contusions to the hip and knee. He prescribed medication and released her.

Jacobs did not believe she was improving, so she looked in the telephone directory and located an orthopedic specialist, Dr. Kenneth Gati. In her office visit on July 7, she complained of hip, knee, and foot pain. Dr. Gati noted that upon his examination of her, she had back pain. The doctor ordered an MRI for her knee. Upon a return visit on July 30, Dr. Gati prescribed conservative treatment because he did not see frank evidence of a tear in her knee. He noted in her chart that she also had generalized aches and pains within her neck, back, and leg. He assessed her with “back pain, possible sciatica” and knee pain, and he ordered physical therapy to address both the back and knee pain.

Jacobs was unable to begin the physical therapy ordered by Dr. Gati because her employer redirected her to another company doctor, Dr. Bryant. In the first office visit to him on August 23, Dr. Bryant observed severe patellofemoral crepitus.¹ Jacobs testified that she reported back and hip pain, but those complaints were not in Dr. Bryant’s medical notes. He recommended surgical repair for what he believed was a tear inside her knee. The surgery was performed on September 3, 2004. Two days after she was discharged from the

¹Crepitus is commonly known as making a cracking or crackling sound upon movement.

hospital, Jacobs returned to the emergency room complaining of knee pain and neck spasms, which spasms she did not relate to her compensable knee injury. Jacobs suffered a post-surgical infection, which was treated.

Jacobs saw Dr. Bryant over the next two months and underwent physical therapy. She exhibited high pain responses to therapy and did not believe she was getting any better. In contrast, Dr. Bryant believed she was improving after his surgical repair. Dr. Bryant released Jacobs from his care on November 24, 2004, upon his determination that she had reached maximum medical improvement. Dr. Bryant assessed her with a ten-percent permanent partial impairment rating to her lower extremity. This translated into a four-percent whole body rating. This rating was accepted and paid by the employer.

Jacobs went to her employer's office but said she was unable to return to work because she had too much pain in her knee. She did not feel capable of entering and exiting the van, nor did she think she would be able to walk the children to and from their designated locations at the Center.

Jacobs believed she needed more treatment, and she sought and received a change of physician back to Dr. Gati. This was approved by the Commission on February 11, 2005. Dr. Gati began seeing her again on March 9, 2005. He ordered new x-rays, which showed arthritic changes in her left knee, and also significant straightening of the spine and loss of lumbar lordosis. Dr. Gati believed that Jacobs might have a disc herniation. He ordered an MRI study of the knee and back, but this was not approved by the workers' compensation

liability carrier, so it was never performed. In a letter to Jacobs's attorney, Dr. Gati opined that Jacobs would benefit by injection therapy for her knee, and he opined that she suffered a back injury along with the knee injury. The employer resisted the claim for additional medical treatment beyond the release by Dr. Bryant, and it resisted her claim that she suffered a compensable back injury.

Appellant Jacobs testified at the hearing that she wanted more treatment and some medications because her knee and hip still hurt. She asked that Dr. Gati's treatment be approved and reinstated. She maintained that she was unable to do the van-aide job she had done before due to difficulty in ambulating. Jacobs acknowledged that she was an overweight woman, and that she receives disability payments due to a depressive disorder. Jacobs also stated that her continued pain was concentrated in her hip down to her knee.

The personnel manager for the Center testified that she recalled appellant coming to her office after she had been released in November 2004, that appellant was limping, that appellant did not think she could do the job, and that the manager did not question her veracity. Other Center personnel were called to testify, agreeing that they remembered her falling at work, but having no knowledge of how she was physically at present, other than they had seen her in the area. One of those witnesses confirmed seeing appellant at a ladies' gymnasium walking without crutches.

The administrative law judge (ALJ) found that appellant Jacobs was entitled to further medical treatment as reasonably necessary in relation to her compensable knee injury. The

ALJ found that she re-entered her healing period when she returned to Dr. Gati in March 2005. The ALJ further found that she was entitled to temporary total disability benefits commencing on that date through a date yet to be determined. The ALJ denied her claim concerning the alleged back injury, noting that while there were objective findings in the x-rays to substantiate a back problem, these objective findings were made months after her fall at work. The ALJ did not discuss the documented complaints of back pain recorded by Dr. Gati shortly after her fall, or the lack of documented complaints of pain in Dr. Bryant's medical notes. The ALJ summarily found that appellant had failed to prove by a preponderance of the evidence that there was a causative link between the back ailment and her compensable fall. On appeal to the Commission, it affirmed and adopted the ALJ decision in a divided vote. Both Jacobs and her employer appeal to our court.

This court reviews decisions of the Workers' Compensation Commission to determine whether there is substantial evidence to support it. *Rice v. Georgia-Pacific Corp.*, 72 Ark. App. 149, 35 S.W.3d 328 (2000). Substantial evidence is that relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). We review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings. *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). The issue is not whether we might have reached a different decision or whether the evidence would have supported a contrary finding; instead, we affirm if reasonable minds could have

reached the conclusion rendered by the Commission. *Sharp County Sheriff's Dep't v. Ozark Acres Improvement Dist.*, 75 Ark. App. 250, 57 S.W.3d 764 (2001). It is the Commission's province to weigh the evidence and determine what is most credible. *Minn. Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999); *Foxx v. American Transp.*, 54 Ark. App. 115, 924 S.W.2d 814 (1996). The Commission may accept or reject medical opinions and determine their medical soundness and probative force. *Green Bay Packaging v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 695 (1999).

We first consider the direct appeal filed by Jacobs, which is whether there is a substantial basis for the denial of her claim that she suffered a compensable back injury. The ALJ found that the objective findings on x-ray in March 2005 were discovered nearly nine months after her fall at work. Thus, "I cannot reasonably find a causal relationship between the work-related accident and the x-ray findings."

Appellant contends that she consistently complained of back pain, that Dr. Gati noted those complaints within days of her fall, that Dr. Gati attempted to treat her with physical therapy for her back pain, and that Dr. Gati opined all along that she had a back problem. Appellee contends that appellant's back pain, if any, was as likely due to her being overweight, and it points to other witnesses who said they did not recall appellant complaining about her back hurting at or around the time she fell. We believe that the ALJ arbitrarily disregarded the evidence that showed a causal connection.

Our supreme court has held that a straightened lumbar-spine is an objective medical finding. *See Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000). The ALJ acknowledged that the x-rays contained objective findings, although there was no notation by Dr. Gati of muscle spasms. Therefore, the question boils down to whether appellant proved by a preponderance of the evidence that her back problems were causally related to her work injury.

The Commission apparently deemed Dr. Gati's medical opinion sound as it related to her need for further treatment for her knee. It accepted his reading of the x-rays as substantiating objective findings of injury. There is no legitimate, or explained, reason why the Commission rejected his notations of back pain from his first evaluation of Jacobs in the days following her fall as evidence causally linking her fall and her back problems. There was no evidence, medical or otherwise, to suggest that appellant suffered from prior back problems. There was no finding made that appellant Jacobs was not credible in her testimony that she complained of back pain to her doctors from and after her fall at work.

Where there is little or no medical evidence to the contrary, it is error to deny compensability where reasonable minds cannot differ. *See Crudup v. Regal Ware, Inc.*, 69 Ark. App. 206, 11 S.W.3d 567 (2000); *Lloyd v. UPS*, 69 Ark. App. 92, 9 S.W.3d 564 (2000). The Commission may not arbitrarily reject the testimony of any witness, nor may the Commission arbitrarily disregard other evidence submitted in support of a claim. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). We hold that reasonable

minds could not conclude that her back problem was not causally related to her work injury. Therefore, we reverse on direct appeal.

Next, we consider the cross-appeal submitted by the employer. It argues that there is no substantial evidence to support that appellant was entitled to additional medical treatment for her compensable knee injury, and further that appellant was not entitled to additional TTD. Appellee contends that as of Dr. Bryant's release in November 2004, appellant had received all the reasonable and necessary treatment due her. Appellee adds that appellant simply resigned her job after her release because she did not want to go back to work, not because she was physically incapable of working. Appellee asserts that appellant is magnifying her symptoms in order to acquire more treatment and more TTD. It urges us to reverse the award of additional medical treatment and the award of reinstated TTD.

First we consider the issue of whether medical treatment from and after March 9, 2005, was reasonable and necessary. What constitutes reasonable and necessary treatment is a question of fact for the Commission. *Gansky v. High Tech Eng'g*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Arkansas Dep't of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994); *Morgan v. Desha County Tax Assessor's Office*, 45 Ark. App. 95, 871 S.W.2d 429 (1994). There were competing physician views on whether appellant needed more treatment. Certainly the Commission was within its authority to accept Dr. Gati's opinion that appellant's arthritis in the knee was aggravated by the compensable injury, that the arthritis required further injection therapy, and that she might also have a tear inside her knee.

There were objective findings to support the continued need for treatment—the x-rays showing the arthritis and the evidence of crepitus in the knee. The Commission was authorized to believe appellant’s testimony that she did not benefit from surgery performed by Dr. Bryant. It is notable that the Commission approved a change of physician to Dr. Gati in the spring of 2005, after Dr. Bryant’s release. Because there is substantial evidence to support that appellant’s workplace injury had not fully resolved and would improve with further treatment, we affirm the finding that additional medical treatment is warranted.

Appellee focuses its argument more vigorously on the reinstatement of TTD benefits, which we now consider. Appellant testified that she did not feel capable of returning to her old job. Dr. Bryant thought appellant should return to work. Dr. Gati did not opine whether appellant could work or not. Appellee contends that appellant is malingering, and even if she needs more treatment, she has not shown incapacity to earn wages. Generally speaking, when an injured employee is totally incapacitated from earning wages and remains in her healing period, she is entitled to temporary total disability. *KII Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002); *Johnson v. Rapid Die & Molding*, 46 Ark. App. 244, 878 S.W.2d 790 (1994). However, in this instance, we have a permanent partial impairment rating regarding her knee, and thus this falls within the meaning of a scheduled injury. In the opinion that was affirmed and adopted by the Commission, the ALJ characterized appellant’s injury as a scheduled injury. As applied to scheduled injuries, a claimant is entitled to receive temporary total or temporary partial disability benefits during the healing period or

until she returns to work regardless of whether she has demonstrated that she is actually incapacitated from earning wages. *See Wheeler Const. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The ALJ cited to *Wheeler* in his opinion and noted that appellant was in her healing period and had not returned to work, and summarily awarded TTD. Appellant did not have to prove that she was in fact incapacitated from earning wages. *See also Fendley v. Pea Ridge Sch. Dist.*, __ Ark. App. __, __ S.W.3d __ (Dec. 20, 2006).

Reversed and remanded on direct appeal. Affirmed on cross-appeal.

GLADWIN and GRIFFEN, JJ., agree.